KETUA PENGARAH PERTUBUHAN KESELAMATAN SOSIAL

v.

RAJAPARAMESWARI MARIMUTHU

HIGH COURT MALAYA, PULAU PINANG
RK NATHAN J
[CIVIL APPEAL NO: 16-12-2003]
11 OCTOBER 2004

LABOUR LAW: *Social Security - Accidents while travelling - Whether arising out of and in the course of employment - Whether employee travelling on route between place of residence or stay and place of work - Meaning of 'place of residence or stay' - Whether must be permanent place of residence or abode - 'Place of stay' - Whether can be temporary or short-term place of dwelling - Whether there had been an 'employment injury' - Employees Social Security Act 1969, ss. 2(6), 24(1)(a)*

WORDS & PHRASES: *"place of residence or stay" - Employees Social Security Act 1969, s. 24(1)(a) - Whether must be permanent place of residence or abode - 'Place of stay' - Whether can be temporary or short-term place of dwelling*

The respondent herein was, at the material time, employed as a manual worker by one Statsym Bhd ('the company') which was registered under the Employees' Social Security Act 1969 ('the Act'). The respondent's working hours were from 6.45am to 2.45pm and her residential address was recorded as 'Taman Tun Sardon, Gelugor'. The respondent testified that she would visit her daughter in 'Bukit Dumbar' every weekend and stay overnight thereat, and leave for work on Monday mornings. As it transpired, the respondent went to her daughter's house in Bukit Dumbar after work on 9 January 2002. At 6am the very next morning, her brother-in-law took her on his motorcycle and, as they were travelling to the bus station to catch the factory-bus, they met with a road accident. As it turned out, the Social Security Organisation ('SOCSO') rejected the respondent's claim for benefits on the ground that the accident did **not** take place whilst she was "travelling on a route between her place of residence or stay and her place of work". Aggrieved, the respondent appealed to the Social Security Appellate Board ('the Board'). The Board allowed her appeal and, hence, the instant appeal by SOCSO to the High Court.

Held (dismissing the appeal):

[1] The determination of the instant appeal turned on the true construction of s. 24(1)(a) of the Act, in particular the phrase "place of residence or stay". Although the word "residence" carries with it a degree of permanency in dwelling, the word "stay" does **not**. On the contrary, the words 'place of stay' connote a temporary or short-term or an impermanent kind residency. (pp 531 e-g & 532 a-e)

[1a] The words "residence" and "stay" in the phrase "place of residence or stay" must be read disjunctively. Parliament could **not** have intended the word "stay" to have the same meaning as the word "residence". (pp 531 e-g & 532 a-e)

[1b] Consequently, when the respondent commuted from her daughter's house in Bukit Dumbar to the bus station, on the morning of 10 January 2002, she was, for the purposes of s. 24(1)(a) of the Act, 'travelling on a route between her place of stay and her place of work'. An "employment injury" within the meaning of s. 2(6) of the Act had indeed been sustained. (pp 531 e-g & 532 a-e)

[Judgment for the respondent.]

Case(s) referred to:
Ketua Pengarah Pertubuhan Keselamatan Sosial v. Jusoh Abu Bakar [2003] 1 CLJ 383 HC ***(dist)***

Legislation referred to:
Employees' Social Security Act 1969, ss. 2(6), 24(1)(a)

For the appellant - Azrina Mohd Isa; M/s Skrine
Respondent in person

Reported by Gan Peng Chiang

JUDGMENT

RK Nathan J:

Facts

The respondent/applicant was employed as a manual worker at Statsym Berhad from 26 September 1998. Her normal working hours are from 6.45am to 2.45pm. Her employer registered under The Employees' Social Security Act 1969 (the SOCSO Act). The applicant's residential address is at Taman Tun Sardon, Gelugor. Her evidence was that every weekend she would go to her daughter's house which was at Bukit Dumbar and that on the Monday morning she would leave for work, that is to the bus station where the factory bus would pick her up.

On 9 January 2002 she went to her daughter's house after work as her grandson was not well. The next morning that is on 10 January 2002 her brother-in-law took her on his motorcycle at 6am to the bus station. On the way to the bus station from her daughter's house, she was involved in an accident. Socso rejected her claim based on s. 24(2) of the Socso Act.

Findings Of The Court

To consider the impact of s. 24(2) to this case, it is necessary to reproduce the entire s. 24 which reads as follows:

> 24. Accidents while travelling.
>
> (1) An accident happening to an insured person shall be deemed to arise out of and in the course of his employment if the accident happens while the insured person:
>
> (a) is travelling on a route between his place of residence or stay and his place of work;
>
> (b) is travelling on a journey made for any reason which is directly connected to his employment; or
>
> (c) is travelling on a journey between his place of work and the place where he takes his meal during any authorized recess.
>
> 2. If the accident under subsection (1) occurs during any interruption of, or deviation from, the insured person's journey made for any of the purposes stipulated in the same subsection, the accident shall not be deemed to arise out of and in the course of his employment.

The respondent/applicant then appealed against Socso's rejection of her claim. The Chairman of the Social Security Organisation Board allowed her appeal. Against that decision Socso appealed to this court. The respondent was unrepresented. When I asked her if she wanted an adjournment to engage counsel, she said she did not have the financial means to engage counsel. I then asked counsel for the appellant if she agreed with the court that the issue was centered on the interpretation of s. 24. Counsel agreed. I then directed counsel to satisfy the court as to the interpretation to be attributed to s. 24(1)(a) in relation to the factual matrix of this case.

Counsel then referred me to the case of *Ketua Pengarah Pertubuhan Keselamatan Sosial v. Jusoh Abu Bakar* [2003] 1 CLJ 383. The facts of that case were as follows:

The respondent was an insured person under the Socso Act. The respondent was injured in an accident whilst travelling by motorcycle from his permanent house at Teluk Ketapang, Kuala Trengganu, to his rented house at Paka in Dungun for the purpose of changing into his uniform before proceeding to his place of work at Kerteh in his employer's van.

Nik Hashim b. Nik Ab. Rahman J (as he then was) held that the respondent's house at Teluk Ketapang at Kuala Trengganu could not in law be considered as his place of residence or stay in relation to his place of work for the purpose of s. 24(1)(a) of the Act because it is not the respondent's house or base from where he would go out to work everyday. His Lordship held that since that house at Kuala Trengganu was merely the respondent's weekend retreat, the respondent's journey from the said house to his rented house at Paka at the material time could not be considered as travelling on a route between his place of residence or stay, and his place of work. His Lordship held the view that it would be overstretching the provision of s. 24(1)(a) beyond its reasonable limit, to hold that the insured fell within the said subsection. He therefore concluded that the accident in the circumstances was not a commuting accident envisaged under s. 24(1)(a) of the Act and that it was not an employment injury arising out of and in the course of the respondent's employment pursuant to s. 2(6) of the Act.

To consider the rationale behind s. 24(1)(a) it is necessary therefore to consider the meaning of the two key words in that subsection. They are "residence" or "stay". "Residence" is defined in the *Concise Oxford Dictionary*, 9th edn. as "a place where a person resides; and abode" and "reside" is defined as "have one's home, dwell permanently". The meaning to be attributed to the word "residence" in s. 24(1)(a) would be to give it a degree of permanency. In other words residence can be described as the permanent or habitual home of a person, for the purposes of this Act.

The word "stay" is defined in the same dictionary as "to have temporary residence as a visitor etc, the act or an instance of staying or dwelling in one place, the duration of this (just a ten minute stay; a long stay in London"). In other words the word "stay" is distinct and is opposed to permanency. It connotes a meaning that the person would stop at the place only for a short while. There is no permanency as in residence. It is a temporary stop.

Having now defined both the words it is necessary to relate them to s. 24(1)(a) to get the full import of the meaning actually intended by Parliament. It is important to note the word 'OR' between 'residence' and 'stay' in the said subsection and therefore the two words must be read disjunctively. Parliament would certainly have not intended the word 'stay' to have the same meaning as 'residence' as otherwise it would be superfluous and Parliament intends that every word it uses in its Acts must be given its ordinary meaning.

Since 'stay' does not connote a permanent residence and since Parliament did not intend by the use of the word OR for both words to have a similar meaning and since the dictionary defines 'stay' as a temporary abode it is my judgment that on the facts of this case when the insured left her daughter's house, she was in fact traveling on a route between her place of 'stay' and her place of work, that is to the bus station where she would be picked up by the factory bus.

Unlike in the case of *Jusoh b. Abu Bakar (supra)* where the insured met with an accident whilst proceeding from his temporary place of stay in Kuala Trengganu to his permanent home in Paka to change before proceeding to Kerteh, the insured in this case was enroute directly from the place of stay to the place of work. In my judgment the Chairman of the Board was correct in his interpretation of s. 24(1)(a). I therefore held that the respondent herein did sustain an employment injury as described by s. 2(6) of the Act read together with s. 24(1) of the Act. In *Jusoh*'s case the insured was unable to succeed because he deviated to his house at Paka before proceeding to Kerteh. The learned judge did not consider in his judgment what the position would have been if Jusoh had gone directly from Kuala Trengganu to Kerteh.

I therefore dismissed the appeal and awarded the respondent RM100 as costs for her traveling expenses to attend court.